U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: DEC 14 2011 OFFICE: TEXAS SERVICE CENTER

[redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a [redacted], a company that the petitioner founded. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on May 27, 2009. In an accompanying statement, counsel stated that the petitioner's "past, ongoing and prospective leadership role as a financial sponsor of biotechnology and pharmaceutical development unquestionably serves the U.S. national interest."

The petitioner earned a Bachelor of Arts degree in physiological sciences from [redacted] 1991, and a Bachelor of Medicine and Surgery degree from [redacted] in 1994. The petitioner acquired various medical credentials through 1998, but there is no evidence that the

petitioner has practiced medicine since that time. [redacted] In 1999, the petitioner earned a master of business administration degree from [redacted]. The record contains no evidence that the petitioner has any specialized training in biopharmaceuticals.

Counsel stated that the petitioner is responsible for "[m]ajor equity investments . . . [that] have supported the successful development and FDA [Food and Drug Administration] approval of numerous high-impact drugs," such as the cancer drugs Erbitux, Tarceva and Nexavar, Vidaza (used in myelodysplastic syndrome), Soliris (to treat some cases of paroxysmal nocturnal hemoglobinuria) and Recothrom (which controls bleeding during surgery). Counsel also stated that the petitioner steered investors away from products later found to be ineffective.

The petitioner's initial submission contained no documentary evidence of his investment activities. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). This principle is highly relevant, because there is at least one instance in which the evidence does not match counsel's claims about that evidence.

Counsel claimed that the petitioner [redacted] The archived printout of the [redacted]

> A former surgeon and 1999 MBA graduate from Insead, the [redacted] school, has won its [redacted] being products on a web site for [redacted]
>
> [The petitioner] [redacted] the plan, with a further Euros [redacted] added as a capital investment if the company is created within three months of graduation.

The record does not support the claim that the petitioner won a [redacted] Entrepreneurship award." The record shows only that the petitioner won an award with that potential total value. The record contains no evidence that the beneficiary created DrViva.com within the required three months, and no evidence that he received the [redacted] nvestment as a result. Indeed, the record contains no evidence that DrViva.com ever existed. The petitioner's own *curriculum vitae* does not mention DrViva.com. (The domain name http://drviva.com currently belongs to a private nursing practice.)

Counsel states that the petitioner is a principal of [redacted], and as such he would have difficulty obtaining a labor certification. [redacted] acknowledgement that

> there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for a labor certification. While this fact

> will be given due consideration in appropriate cases, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field.

Id. at 218 n.5.

Simply listing some of the petitioner's specific portfolio management activities does not establish their significance relative to the work of others in the same specialty. Rather than provide documentary evidence in this regard, counsel asserted: "The magnitude of [the petitioner's] impact on US-based biotechnology and pharmaceutical companies is widely acknowledged by leaders in his field and related fields." To support this claim, the petitioner submitted nine witness letters.

[redacted], chairman and chief executive officer [redacted], stated:

> [The petitioner's] relationship with [redacted] began shortly after he started working as an investment analyst at a leading alternative investment fund, [redacted] Group, in [redacted] He embarked on a comprehensive process of due diligence on [redacted] in an exemplary effort to become extensively acquainted with our company and drug pipeline. . . . In early 2005 he initiated a substantial investment in [redacted] on behalf of [redacted] Later that year, [redacted] announced that . . . our then investigational agent Revlimid® (lenalidomide) . . . [was found] to have overwhelming efficacy in multiple myeloma, an incurable type of blood cell cancer affecting over [redacted] people in the United States. This announcement inaugurated a period of steady share price appreciation from approximately $16 per [redacted] share in March 2005 to a peak of $76 per share in August 2009. Revlimid in 2009 is expected to generate net product sales of approximately $1.7 billion. . . .
>
> [The petitioner's] investment in our company is illustrative of his professional modus operandi and the contribution of institutional investors to the drug development industry.

[redacted], manager of investor relations at the Biotechnology Industry Organization (BIO), stated:

> I first met [the petitioner] in [redacted], when he was a client of mine at [redacted] a primary research firm providing investors with on-demand access to a worldwide network of industry experts. At the time, [the petitioner] was working with [redacted]er. His reputation preceded him as a diligent and highly adept individual, extremely capable of making substantial investments for well-deserved companies. . . .

> Most recently . . . I asked [the petitioner] to participate on the Advisory Board for [BIO's] largest investor conference put on by the organization.
>
> [redacted]
>
> I offered [the petitioner] [redacted] in our group in 2007. . . . The combination of his qualifications . . . , professional pedigree . . . and strong track record of performance renders him highly suited as an institutional investor specialized in the biopharmaceutical sector and is most unusual in the financial services industry. . . .
>
> I am pleased our group was able to attract an individual of [the petitioner's] caliber.
>
> . . . [The petitioner] has demonstrated a capacity for discerning critical nodes in the drug development process that represent opportunities for institutional investors to profitably support bringing the next generation of therapeutics to patients, and simultaneously protect investors against deploying capital toward unpromising projects.

[redacted] praised the petitioner's "record of professional accomplishment," but cited only one specific example of the petitioner's work:

> One of the earliest investments [the petitioner] made on [redacted], in November 2007, was in [redacted] . . [which was] developing a novel agent for treatment-failure gout, a rare indication largely neglected by other investors, even healthcare specialists. On December 13, 2007 [redacted] announced significant positive results in a late-stage clinical study with its agent, producing an investment gain for [redacted]. FDA recently assigned Savient's application for approval to license the drug priority review status, a designation reserved for drugs deemed to potentially provide an important new advancement in treatment or provide a treatment for which there is no adequate therapy available. If approved, Savient's agent may significantly improve the quality of life for people living with gout, one of the most common rheumatic illnesses.

[redacted] appeared to make contradictory assertions, saying that [redacted] "rare" occurrences of "treatment-failure gout," but then broadening the drug's impact to "one of the most common rheumatic illnesses." If the drug is only for a small fraction of gout patients who do not respond to other therapies, then references to the wider incidence of gout are irrelevant.

The record contains no documentary evidence from [redacted] to show the petitioner's specific role in advancing the unnamed drug candidate through the approval process.

[redacted] does not claim that the beneficiary played any part in discovering, developing or refining the drug.

[redacted] stated:

> In my numerous interactions with him over the years, [the petitioner] has impressed me as an astute investor, whose ability to integrate diverse bodies of clinical, biostatistical, financial and regulatory knowledge with clear judgment distinguishes him even among other investors specialized in biomedical companies. . . .
>
> I specifically recall a series of conversations with [the petitioner] in 2004 about the experimental agent Genasense™ (oblimersen sodium) for malignant melanoma, the most lethal form of skin cancer. . . . Genasense was being developed by Genta Inc. . . . In September 2003, Genta's management announced results from a late stage clinical study of Genasense, characterizing them as "positive." [The petitioner's] willingness to take a critical look at the data and discern this characterization as unsubstantiated led him to the high-conviction, counter-consensus view in advance of an April 2004 advisory committee meeting of FDA's oncology division, at which Genasense's safety and efficacy data were to be publicly discussed, that an investment in Genta should be avoided. On April 3rd, 2004, the committee members voted that the data presented failed to provide substantial evidence of effectiveness, and in the five years since, Genasense . . . has not been recommended for FDA approval for melanoma or any other indication.

[redacted] asserted that the petitioner's reluctance to invest in [redacted] was "counter-consensus," but the record contains no documentary evidence to establish the claimed pro-Genta consensus prior to the April 2004 FDA meeting. Such gaps in the record serve to illustrate USCIS's strong preference for objective documentation over witness letters.

[redacted] continued:

> Investors like [the petitioner] enhance the efficiency of the convoluted financing process for drugs in development by discerning the critical nodes in the drug development process that represent opportunities for institutional investors to profitably support bringing the next generation of therapeutics to patients, and simultaneously protect investors against deploying capital toward unpromising projects.

The last sentence quoted above closely matches a sentence in [redacted] letter. It is not clear who is the original author of this passage. Nearly identical language also appears in a letter from [redacted]

> [The petitioner] has worked for some of our leading competitors of the highest quality. The stature of these firms in our industry, and the scope of [the petitioner's] investment management activity on their behalf, establishes his status as a leading investor in biopharmaceutical companies.
>
> . . . [The petitioner] and I have never been colleagues, but on multiple occasions we have discussed our respective investment theses on biopharma companies. I have come to understand [the petitioner's] extensive research process, and have been impressed with his ability to discern the critical nodes in the drug development process that represent opportunities for institutional investors to profitably support bringing the next generation of therapeutics to patients, and simultaneously protect investors against deploying capital toward unpromising projects.

Another phrase seen (with minor variations) in several letters is the assertion that investors like the petitioner "direct precious and limited financial resources to companies that create value by developing safe and effective medicines." A letter from [redacted], chief executive officer and principal founder of [redacted] Pharmaceuticals, contains that phrase. [redacted] asserted: "Since the time of [the petitioner's] first investment in [redacted] our company's share price has gained approximately 60%, while the general market has declined by about 40%."

[redacted]

> Biopharmaceutical financiers preferentially direct investment capital to companies that create value by developing safe and effective medicines to meet significant patient needs, and the investments made by institutional investors like [the petitioner] on behalf of their employers support the successful development benefiting patients in the US and elsewhere suffering from a range of medical conditions. . . .
>
> Based on my frequent interactions with [the petitioner] over the years, I regard him as belonging to a very small corpus with the appropriate educational qualifications and expertise to synthesize biomedical data of a highly complex and specific nature with equally technically demanding financial information. . . .
>
> Even among members of this small group, my fellow senior ImClone executives . . . and I view [the petitioner] as astute and distinguished.

[redacted] stated that the petitioner "judiciously instigated" a "recent major equity investment" in ImClone shortly before the company made a major announcement about clinical trials for a new drug. Shortly afterward, the price of a share of [redacted] climbed from [redacted]

[redacted]

> In January 2006 . . . I interviewed [the petitioner] for a position as healthcare portfolio manager. SAC's New York affiliate, [redacted], subsequently extended [the petitioner] an employment offer based, in part, on his prior track record at one of our competitors and his academic credentials. . . .
>
> Talented biotechnology investors such as [the petitioner] direct capital to companies that create value by developing safe and effective medicines to meet significant unmet patient needs. Consequently, such companies may gain more efficient access to essential resources, including capital, human talent, vendors, suppliers and contractors. Sophisticated investors characteristically also show an expertise, as [the petitioner] does in his sector, for avoiding investments in companies with dubious prospects.
>
> At Sigma, [the petitioner] demonstrated an ability to capitalize on biotech investment opportunities, occasionally neglected by other investors, where drug development catalysts present potential for significant value inflection.

[redacted] claimed no expertise in finance or biopharmaceuticals. Instead, he described himself as "a psychiatrist specialized in performance enhancement, stress management, and organizational psychology." He collaborated with [redacted] on a book based on his "*Trading to Win* training programs for dealing with trading stress, portfolio management, risk control, and leadership as they relate to peak performance in the trading arena." Some language from [redacted] letter also appears in [redacted]

[redacted]

> [The petitioner] has consistently demonstrated an ability to capitalize on biotech investment opportunities sourced by identifying catalysts in the development of drugs with potential for significant value inflection, and leveraging his skill set as a surgeon and M.B.A. to develop an information advantage. . . . Only a small cadre of healthcare investors pursues this laborious process with the discipline [the petitioner] does. . . .
>
> The investment expertise [the petitioner] has established lies in analyzing drug development strategy, a detailed knowledge of biostatistics, and of FDA policies, guidelines for industry and precedents; financial valuation methodology; trading around positions; and managing portfolio risk.

On February 2, 2010, the director advised the petitioner of the director's intent to deny the petition. The director informed the petitioner that the initial submission did not include sufficient evidence to show the intrinsic merit or national scope of the petitioner's occupation, or to establish "the significance of the beneficiary's efforts in the field."

In response, counsel stated that the intrinsic merit of the petitioner's work is evident from the record. The director has since acknowledged as much, and there is no need to discuss the issue further.

Counsel asserted that the national reach of the pharmaceutical industry demonstrates the national scope of the petitioner's work, and that the petitioner played "no small part" in bringing new drugs to market. Counsel further claimed that "the evidence submitted to date unambiguously proclaims [the petitioner] to have had a substantial impact on funding for the development of critical pharmaceuticals that significantly exceeds that necessary to satisfactorily perform the task."

In a personal statement, the petitioner acknowledged that some witnesses have referred to him as an "investor," but asserted that such a general term fails to account for "the demanding skill of simultaneously analyzing complex biomedical and financial data."

With regard to his record of achievements, the petitioner stated that:

> I have had management discretion over investment funds in excess of $100 million in gross market value, and in the course of my career to date achieved financial gains of approximately $200 million for my employers, and in turn their clients and investors. . . .
>
> More importantly, I feel privileged to have been able to play a critical role in the development of medicines that proceeded to gain FDA approval and benefit millions of patients in this country and abroad. . . .
>
> I have, in addition, financially supported many companies . . . developing promising earlier-stage therapeutics yet to advance to FDA approval and commercial success.
>
> A less obvious, though arguably no less beneficial aspect of my efforts historically, is the active commitment of capital *against* investment opportunities I strongly regard as unpromising. . . . The eventual outcome of these drug development projects has validated my decisions . . . , saving the industry from further wasting valuable resources, and patients from potential harm.

(Emphasis in original.) Like the petitioner's initial submission, the response to the director's notice consists largely of witness letters. Three of the six letters are from prior witnesses. The petitioner asserted that these witnesses "comprise an elite group."

[redacted] the director to review her earlier letter, and stated:

> Pharmaceutical and biotechnology companies need major infusions of financial support to conduct the research and development that lead to new and successful drugs which save lives and improve the quality of life for patients with serious illness. . . . As an investment manager at three renowned investment funds, between 2003 and

> 2009, [the petitioner] proved himself to be an extraordinarily talented investment manager who recognized and supported promising products in development, and steered investors away from products less likely to yield valuable biopharmaceuticals.

[redacted] urged the director to review his previous letter, and stated that the petitioner's "record of accomplishment in his field is eminent, and his history of serving the national interest substantially greater than his colleagues."

[redacted] also asked the director to re-read his previous letter, and asserted that the petitioner's "anti-consensus view on [an investment prospect with] Atherogenics set him a cut above other investment professionals focused on the same opportunity."

The first of three new witnesses is [redacted] for Cancer Research, who stated:

> In my erstwhile capacity as [redacted], I met [the petitioner] numerous times in the course of his investment research on our company, starting in 2003. OSI's lead product, [redacted], was then in advanced clinical studies for treatment-resistant metastatic lung cancer, a truly desperate diagnosis. Despite inconclusive results from earlier stage trials . . . , [the petitioner] developed a highly sophisticated, contrarian perspective . . . that [redacted] would demonstrate significant efficacy in an additional pivotal study in lung cancer, known as BR21, ongoing at the time. This was an anti-consensus view developed through months of meticulous investment research. . . . The significant equity investment he subsequently championed turned his then employer, the renowned alternative investment firm [redacted]
>
> In April 2004, the results of BR21 demonstrated that [redacted] significantly prolonged survival in lung cancer patients whose malignancy had spread to other organs, and progressed despite prior chemotherapy. Just how controversial [the petitioner's] thus validated view had hitherto been, is aptly demonstrated by the 159% increase in OSI's share price the day the trial results were announced.
>
> In September 2004, [redacted] proceeded to demonstrate a significant survival benefit in a second desperate malignancy, pancreatic cancer. . . . [redacted] profound clinical impact is reflected commercially by its blockbuster status, with 2009 global sales revenue exceeding $1.2 billion. The successful development of [redacted] constitutes a high point of my career, and [the petitioner's] support of OSI at a critical time surely provides a compelling example of his professional accomplishments.

[redacted] asserted that the "first and foremost" indicator of the petitioner's "professional impact . . . [is] the clinical and commercial success of biopharmaceuticals he has supported and the fate of those he has urged against."

[redacted] of Business, asserted that the petitioner "has proved himself to be particularly talented" among the "less than 50 individuals . . . [who] control the overwhelming majority of capital allocation to developmental stage [biopharmaceutical] companies." [redacted] "Industry sources recognize that [the petitioner] has played a leading role in the expert evaluation of the prospects for success of pharmaceutical pipeline products."

[redacted] closely mirrors one from the petitioner's own statement, continuing the pattern of shared language in witness statements:

> A less obvious though no less beneficial aspect of [the petitioner's] efforts historically is the active commitment of capital *against* investment opportunities he regarded as unpromising. The eventual narrative of these drug development projects validates [the petitioner's] investment management decisions, saving the industry from further wasting valuable resources, and patients from potential harm.

To explain the lack of documentary evidence to support the petitioner's claims, [redacted] "the strictly proprietary nature of [the petitioner's] work, and the protective environment employers create to defend the financially sensitive information he routinely assimilates."

[redacted]

> While on a personal level [the petitioner] and I are only peripherally acquainted, and I have no self-interest in his application's success, I am well aware – as a business journalist writing since 2001 exclusively about biotechnology, healthcare and drugs – of [the petitioner's] outstanding professional reputation as a distinguished investment manager in the biopharmaceutical industry.
>
> . . . My experience in 2005 and 2006 as a healthcare analyst for an investment management firm augments my perspective on [the petitioner's] work.
>
> At the intersection of institutional finance and biopharmaceutical science, few have the expertise to make investment management decisions and evaluate drug development companies with the same sophistication as [the petitioner]. . . . He has not merely prospects for success, as your aforementioned letter seems to imply, but an established record of investment management success at his field's premier firms.

The petitioner submitted copies of nondisclosure agreements that he executed with his employers, along with Securities and Exchange Commission filings showing that his employers hold ownership interests in various pharmaceutical companies as a result of the petitioner's investments.

The director denied the petition on June 22, 2010. The director acknowledged the intrinsic merit of the petitioner's occupation, but found that the petitioner had not established its national scope or

shown that his record of achievement warranted approval of the national interest waiver. The director stated:

> The petitioner[']s work has given financial support to conduct research and development of new drugs through investment by investors. His successful investment in biotechnology and pharmaceutical history has produced significant financial gain for his employers/clients and investors but the goal of [a] Financial Analyst is to manage portfolio involved in capital allocation for the investors, which could be performed by other Financial Investors also. Therefore the record does not clearly establish that no other Financial Investor can perform this job as [well as the] beneficiary, and will directly or indirectly, impart a national-level benefit to the United States.
>
> . . . There are numerous Financial Analyst [*sic*] and Financial Investors seeking employment in the United States. . . .
>
> Testimonial letters did not establish that the self-petitioner has accomplished anything more significant than other capable members of his profession holding similar credentials and investing capabilities. The record does not establish that the work being performed by the beneficiary could not be accomplished by a U.S. worker possessing the same minimum qualifications.

On appeal, counsel asserts that "the manifestly non-local geographic distribution of [the petitioner's] endeavors" establishes the national scope of his occupation. When compared with the beneficiary in [redacted] whose work derived national scope through integral connection to the national transportation infrastructure, the petitioner meets the national scope requirement. The petitioner's work is not entirely local, and its national reach is not so minimal or trivial as to be negligible. The petitioner's occupation is an integral link between a national pool of investors and a national pool of potential candidates for investment.

Counsel repeats that the petitioner is a principal of the company where he seeks to work. Counsel again observes that [redacted], as quoted earlier, permits USCIS to take the unavailability of labor certification into account as a minor factor, provided that other circumstances exist to warrant exemption from the job offer requirement. The question, then, is whether those other circumstances exist here.

At the same time, the AAO must also note that the petitioner has not shown that labor certification is out of the question for his occupation. Indeed, the petitioner has, for several years prior to filing the present petition, worked as an H-1B nonimmigrant for various United States employers, any one of whom could have sought labor certification on his behalf. The provision of [redacted] permitting USCIS to take self-employment into question should not be construed to say that an alien can create favorable conditions on his own behalf merely by leaving the employ of a United States employer and becoming self-employed.

Counsel protests that the director "misperceives [the petitioner] as, alternatively, an 'investor,' or a 'financial analyst'" rather than a biopharmaceutical portfolio manager. Counsel states:

> To thus equate [the petitioner] with the 'numerous Financial Analyst and Financial Investors seeking employment in the United States' is entirely to miss the point that it is precisely [the petitioner's] ability to operate at the junction of biopharmaceutical science and institutional finance that distinguishes him, and that his clearly evidenced record of accomplishment places him in the highest ranks of the elite community of biopharmaceutical investment specialists.

A point of clarification is necessary here. It may be that the petitioner's "ability to operate at the junction of biopharmaceutical science and institutional finance . . . distinguishes him" from financial analysts in other areas of specialization, but by itself it does not distinguish him from other biopharmaceutical portfolio managers. Specialization is not an inherent basis for granting the national interest waiver; there is no blanket waiver for qualified workers in the petitioner's occupation.

Counsel states:

> It should be manifestly obvious, in light of the trade secrecy agreements, and expert testimony specifically addressing this issue . . . that such items as patents, research, publications, etc., would be grotesquely inappropriate and conspicuously unavailable as evidence of [the petitioner's] achievements in facilitating the financing of medically and publicly critical pharmaceuticals, and conversely, of deterring and arresting the development of publicly deleterious products, such as [redacted], to name but one prominent example.

Counsel cites an unpublished AAO decision from 2003, in which the AAO approved a national interest waiver for a senior mechanical engineer at an aerospace company, based largely on witness letters from high-ranking figures in industry and academia. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While the USCIS regulation at 8 C.F.R. § 103.3(c) establishes that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In the present proceeding, the petitioner has relied almost exclusively on witness letters. Such letters can shed light on documentary evidence in the record, but cannot take the place of that evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony.

See Matter of Caron International, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is, however, ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The AAO does not dispute that the individuals who signed the letters endorse the views expressed in those letters. Nevertheless, the AAO cannot ascribe the precise wording of the letters to those individuals, given the numerous demonstrable use of shared language that an unidentified party appears to have furnished to the witnesses. The witnesses signed the letters, but it is not clear to what extent they wrote them.

Many of the witnesses' claims appear to be amenable to documentation. For instance, [redacted] asserted that "less than 50 individuals . . . control the overwhelming majority of capital allocation to developmental stage [biopharmaceutical] companies." Either [redacted] has seen evidence to that effect, or the figure is little better than a guess. Such a statistic would not seem to be the subject of a non-disclosure agreement (someone supposedly disclosed it to [redacted] who does not work in the industry).

Other claims about the financial performance of various companies appear to be equally amenable to verification, particularly with regard to publicly held corporations whose stock prices and other financial information are available to the public. The AAO is under no obligation to seek out this information and add it to the record on the petitioner's behalf.

Witness accounts of good drugs the petitioner supported, and bad ones he opposed, are anecdotal and do not establish his overall track record. The record offers no way to tell whether the petitioner and the witnesses have selected these accounts to present the petition in the most favorable possible light. Another consequence of the lack of primary documentary evidence is that the record offers no objective way to distinguish between the petitioner's track record and that of others in the specialty. The only comparisons offered come from witnesses whom the petitioner has selected, and the petitioner has a demonstrable interest in submitting the most favorable letters.

Throughout this proceeding, the waiver claim has rested on the assertion that the United States benefits from the availability of effective new drugs, and from avoiding ineffective ones. Credit for drug development, however, belongs to the researchers developing the drugs. USCIS will not transfer a significant part of that credit to investors or other intermediaries who play no part in the actual discovery or development of the drugs.

The petitioner has not shown that his withholding of investment funds has stopped dangerous or ineffective products that would otherwise have reached the market. Counsel, on appeal, names [redacted], a pain reliever pulled from the market amid concerns of serious health risks. The record, however, contains no evidence to show that the petitioner (or any portfolio manager) played any role in the withdrawal of [redacted]. Counsel appears to have named the drug as an example of a dangerous drug, rather than as an example of the petitioner's work.

[redacted] observed that the petitioner opposed investment in the maker of [redacted] before an FDA committee determined "that the data presented failed to provide substantial evidence of effectiveness." The record does not show that the petitioner's opinion influenced the FDA's decision, or that it was the petitioner, rather than the FDA, who kept the drug off the market. [redacted] acknowledged that the petitioner's opposition to [redacted] was "counter-consensus," implying that other investors were supporting the drug's development. [redacted] also does not indicate that the petitioner's actions ceased all efforts to promote the drug. Rather, he acknowledged that "several additional studies" have taken place following the FDA's 2004 decision.

Even if the record showed that the petitioner played an active role in stopping the development of some drugs, the AAO will not find that a portfolio manager serves the national interest by refusing to invest in products he or she does not find worthy. One might construe such a finding as usurping the authority of the FDA, and is subject to abuse if an investor opposes the development of a particular drug for non-medical reasons (such as a vested financial interest in a competing pharmaceutical company). It is certainly each investor's prerogative to choose which projects are worthy of investment, but the AAO is not willing to conclude that the petitioner would serve the national interest (not to be confused with the interests of his clients) by impeding the development of drugs that he does not consider promising.

As shown above, the petitioner is not directly responsible for the development of new drugs, or for stopping drugs that do not belong on the market. Instead, any direct benefit that arises from the petitioner's work would come in the form of financial return from his investment acumen. The petitioner has not, however, advanced financial considerations as a basis for the national interest waiver. The petitioner having made no claim in this regard, the AAO will not speculate as to the substance or merits of any arguments the petitioner might have made with regard to such a claim.

The petitioner has established that he is a successful biopharmaceutical portfolio manager, and that some figures in the field and related fields consider him to be especially skilled in that occupation. Exceptional ability in one's field, however, is not an automatic basis for a national interest waiver. The petitioner has not provided objective evidence that his work as a biopharmaceutical portfolio manager has influenced his field as a whole and benefited the United States to a greater extent than others in the specialty. The record, therefore, does not support the assertion that the petitioner will prospectively benefit the United States to an extent that would warrant a national interest waiver.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job

offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.